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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,812	11/13/2000	Patrick D. Smith	PD05924AMP01	9554
22917	7590	10/28/2003	EXAMINER	
MOTOROLA, INC. 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196			BURD, KEVIN MICHAEL	
			ART UNIT	PAPER NUMBER
			2631	10

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/712,812	SMITH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kevin M Burd	2631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 8/1/2003.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-29 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-29 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

1. This office action in response to the amendment filed 8/6/2003, is a non-final office action.

***Response to Arguments***

2. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Beser (US 6,442,158).

Regarding claims 1, 12, 19, 22 and 26, Beser discloses a cable modem system that measures the quality of service of the network (figure 1 and abstract). Measurements are made of the network and quality of service (QoS) levels are determined (figure 9, block 274). A QoS for the individual data packet is also known. A comparison of the QoS requirement for the data packet and the QoS of the path is

made. If the QoS level would be violated by transmission of this data packet, the data packet is cached (figure 9, blocks 276 and 278 and column 18, lines 35-55). Each communication medium is made up of non-shared paths (path from cable modem to cable net) and shared paths (paths inside the cable net) as shown in figure 1.

Regarding claims 2, 13 and 20, as a result of the comparison, it is determined the data packet cannot be transmitted without violating the QoS level (column 18, lines 35-55).

Regarding claims 3 and 14, the physical path is not physically inspected.

Regarding claims 4 and 15, the QoS indicates the quality of the path is incapable of supporting the transmission of the data packet (column 18, lines 35-55).

Regarding claims 5, 8, 9, 16 and 17, each communication medium is made up of non-shared paths (path from cable modem to cable net) and shared paths (paths inside the cable net) as shown in figure 1.

Regarding claims 6, 25 and 27, the communication system is a cable modem system (abstract).

Regarding claim 10, the quality of service values are known prior to the comparison.

Regarding claims 11, 18 and 21, the determination of if the QoS indicates the quality of the path is incapable of supporting the transmission of the data packet (column 18, lines 35-55) is made repeatedly.

Regarding claims 23, 24, 28 and 29, a plurality of cable modems are coupled to the cable net.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chen et al (US 6,588,016) discloses a cable modem communication system for detecting degradation in a cable modem (column 9, line 64 to column 10, line 13).

***Conclusion***

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
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**or faxed to:**

(703) 872-9314, (for formal communications intended for entry or for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Burd, whose telephone number is (703) 308-7034. The Examiner can normally be reached on Monday-Thursday from 9:00 AM - 6:00 PM.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.

  
\_\_\_\_\_  
Kevin M. Burd  
PATENT EXAMINER  
10/17/03